

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NICHOLAS PARKER, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

UNITED INDUSTRIES CORPORATION,

Defendant.

Civil Action No. 1:17-CV-05353-GBD-HBP

**DECLARATION OF NICHOLAS PARKER IN SUPPORT OF PLAINTIFF'S MOTION
FOR CLASS CERTIFICATION, APPOINTMENT OF CLASS REPRESENTATIVE,
AND APPOINTMENT OF CLASS COUNSEL**

I, Nicholas Parker, declare as follows:

1. The statements made in this Declaration are based on my personal knowledge and, if called as a witness, I could and would testify thereto.
2. I am the representative plaintiff in this class action. This Declaration is given in support of my request that the Court certify this case as a class action, appoint me as class representative, and appoint my counsel as class counsel.
3. Attached hereto as Exhibit 1 are true and correct copies of excerpts from my February 22, 2018 deposition transcript.
4. I purchased Cutter Natural Insect Repellent in the summer of 2015 for approximately \$5 at a Home Depot store located in New York, NY.
5. Prior to purchasing Cutter Natural Insect Repellent, while I was in the store, I saw that the product labeling stated that it was an "insect repellent" that "repels mosquitos for hours." I understood those claims to mean that the product was effective to repel mosquitos for hours. I

relied on the truth of those claims when deciding to buy the product. I would not have purchased Cutter Natural Insect Repellent if I knew the product was ineffective to repel mosquitos for hours.

6. I was deposed by Defendant's counsel on February 22, 2018. In response to questioning, I testified that I applied Cutter Natural Insect Repellent as directed by the product's instructions and that it was not effective to repel mosquitos:

Q: Do you recall applying the Cutter All natural ...?

A: Yes.

Q: Do you recall how often?

A: I don't recall specifically how often, but I'm sure I followed the directions to how often to apply it based on that, as I do for sunscreen and other products.

...

Q: Did you get bitten?

A: Yes.

...

Q: Did you have mosquito bites on both your legs?

A: Yes.

Q: Did you have them on both your arms?

A: Yes.

Exhibit 1, Parker Dep. at 56:8-60:1.

7. I also testified regarding my damages in this action:

Q: Is it your allegation that you've been damaged as a result of your use of Cutter Natural?

A: Yes

Q: What damage have you suffered?

A: The purchase price of the product that I purchased that was worthless.

Q: Any other damages?

A: I don't believe so.

Exhibit 1, Parker Dep. at 107:13-22.

8. I also testified regarding fulfillment of my duties as a class representative:

Q: Mr. Parker, do you understand what your responsibilities are as a class representative in this case?

A: I do.

Q: What's your understanding?

A: Represent the best interests of the class that I'm representing, to keep up to date with the case and everything that's important to it, and to keep tabs on my lawyers and what they're working on.

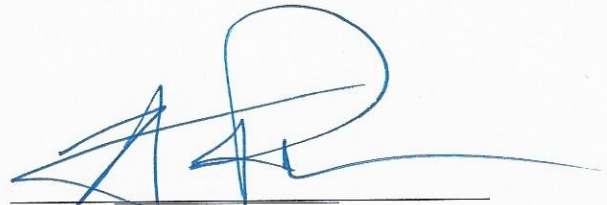
Exhibit 1, Parker Dep. at 108:24-109:9.

9. I made the decision to become part of this lawsuit in a representative capacity because I felt that it was the right thing to do. I am seeking a full refund for myself and other class members, as well as an order preventing Defendant from selling this product in the future.

10. Throughout the course of this litigation, I have put in significant time and effort in supervising my attorneys, searching for and reviewing documents, and sitting for a deposition. I am committed to the prosecution of this action to its conclusion.

11. I understand that, as a class representative, I will have an obligation to assert and protect the interests of other class members and not just act for my own personal benefit. I do not have any conflicts with other class members. I will do my best to protect the interests of other class members and will fairly and adequately represent the class to the best of my ability.

12. I declare under penalty of perjury under the laws of the United States and the State of New York that the foregoing is true and correct. Executed on January 29, 2019 at New York, NY.



Nicholas Parker

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 Case No. 17-CV-5353-GBD

5 -----x
6 NICHOLAS PARKER, on behalf of himself and
7 all others similarly situated,
8 Plaintiff,
9 - against -
10 UNITED INDUSTRIES CORPORATION,
11 Defendant.
12 -----x

13 February 22, 2018
14 10:07 a.m.

15 Videotaped Deposition of NICHOLAS PARKER,
16 taken by the Defendant, pursuant to
17 Notice, held at the offices of Butzel
18 Long, 477 Madison Avenue, New York, New
19 York, before Tammy O'Berg, a Shorthand
20 Reporter and Notary Public of the State of
21 New York.

1 NICHOLAS PARKER

2 around the campfire?

3 Q. Close enough to feel it.

4 A. I would say yes, then.

5 Q. Did you ever eat outdoors during
6 the stay at Camp No Counselors?

7 A. Don't recall specifically.

8 Q. Do you recall applying the
9 Cutter All Natural while you were at Camp
10 No Counselors?

11 A. Yes.

12 Q. Do you recall how often?

13 A. I don't recall specifically how
14 often, but I'm sure I followed the
15 directions to how often to apply it based
16 on that, as I do for sunscreen and other
17 products.

18 Q. Is it your best recollection
19 that you would have reapplied it according
20 to the instructions on the bottle?

21 A. Yes.

22 Q. Do you recall using it
23 throughout the three days that you were at
24 the camp?

25 A. Yes.

1 NICHOLAS PARKER

2 Q. Did you use it the entire time?

3 A. Yes.

4 Q. Did you finish the bottle?

5 A. Don't recall.

6 I don't believe so.

7 Q. Do you still have the bottle?

8 A. No.

9 Q. What did you do with the bottle?

10 A. I discarded it.

11 Q. Did any of your friends use any
12 of your Cutter All Natural Insect
13 Repellent?

14 A. I don't believe so, but I don't
15 recall specifically.

16 Q. Do you know if they brought
17 their own insect repellent?

18 A. I think that's probably likely,
19 yes.

20 Q. Do you know if they did or you
21 just think they did?

22 A. I think they likely did, yes.

23 I don't know why you would go to
24 Upstate New York without insect repellent.

25 Q. Do you recall there were a lot

1 NICHOLAS PARKER

2 of bugs up there?

3 A. There were, yes.

4 Q. Do you know which kind of bugs
5 were up at the camp?

6 A. I don't. I mean -- except for
7 mosquitoes, I don't know the actual
8 biological -- but there were definitely
9 mosquitoes.

10 Q. Did you get bitten?

11 A. Yes.

12 Q. A lot?

13 A. Define a lot.

14 Q. Let's go back to when you were
15 growing up in Colorado.

16 Would you get bitten frequently?

17 A. I suppose.

18 Q. Do you have a recollection that
19 you'd get bitten and it would itch and you
20 would scratch a lot because you got bit by
21 a mosquito?

22 A. Yes.

23 Q. Do you recall how much you were
24 bitten while you were at the Camp No
25 Counselors?

1 NICHOLAS PARKER

2 In other words, do you recall
3 that you would feel that you would have a
4 mosquito bite and you would scratch it, or
5 were you covered in mosquito bites during
6 your time at the camp?

7 A. I recall having mosquito bites.

8 Q. Not that you were covered in
9 them, you just recall having a mosquito
10 bite here or there on your body?

11 A. I just recall having mosquito
12 bites.

13 Q. Do you recall if it was all over
14 your body?

15 A. I really don't know the
16 definition of all over my body in terms of
17 mosquito bites.

18 Q. Did you have mosquito bites on
19 your legs?

20 A. Yes.

21 Q. Did you have mosquito bites on
22 both your legs?

23 A. Yes.

24 Q. Did you have them on both your
25 arms?

1 NICHOLAS PARKER

2 A. Yes.

3 Q. Did you have them on your back?

4 A. The back I don't recall.

5 Q. Stomach?

6 A. It's difficult for me to recall
7 exactly where on my body I had mosquito
8 bites. I just recall having mosquito
9 bites.

10 I don't know exactly or where I
11 had mosquito bites on my body.

12 Q. Do you recall that it interfered
13 with your ability to enjoy the weekend?

14 A. I don't recall.

15 MS. SCHMELZ: Let's wait a
16 minute.

17 (Pause.)

18 BY MS. SCHMELZ:

19 Q. Do you know if you were bitten
20 by any other insect other than a mosquito?

21 A. Don't recall.

22 Q. Did you seek any treatment while
23 you were at the camp for the mosquito
24 bites?

25 A. Did not.

1 NICHOLAS PARKER

2 recall using a product under the brand
3 name Off.

4 A. (Indicating).

5 Q. Do you recall ever using a brand
6 name under the name Burt's Bees?

7 A. Insect repellent, no.

8 Q. Other than Off and Cutter, you
9 don't recall using any other branded
10 mosquito repellants?

11 A. I don't recall off the top of my
12 head.

13 Q. Is it your allegation that
14 you've been damaged as a result of your
15 use of Cutter Natural?

16 A. Yes.

17 Q. What damage have you suffered?

18 A. The purchase price of the
19 product that I purchased that was
20 worthless.

21 Q. Any other damages?

22 A. I don't believe so.

23 Q. No personal injury?

24 A. No.

25 Q. Did you ever contact anybody at

1 NICHOLAS PARKER
2 the defendant, United Industries
3 Corporation, to complain about Cutter
4 Natural product?

5 A. No.

6 Q. Did you ever ask for a refund?

7 A. I did not.

8 Q. Have you ever talked to anybody
9 at the EPA about the product?

10 A. No.

11 Q. How about the Federal Trade
12 Commission?

13 A. No.

14 MS. SCHMELZ: Let's go off the
15 record, please.

16 THE VIDEOGRAPHER: The time now
17 is approximately 11:56. We're going
18 off the record.

19 (Brief recess taken.)

20 THE VIDEOGRAPHER: The time now
21 is approximately 12:12 p.m. We're
22 back on the record.

23 BY MS. SCHMELZ:

24 Q. Mr. Parker, do you understand
25 what your responsibilities are as a class

1 NICHOLAS PARKER

2 representative in this case?

3 A. I do.

4 Q. What's your understanding?

5 A. Represent the best interests of
6 the class that I'm representing, to keep
7 up to date with the case and everything
8 that's important to it, and to keep tabs
9 on my lawyers and what they're working on.

10 Q. Who do you understand to be
11 members of the class?

12 A. It's all people of the United
13 States who purchased Cutter All Natural
14 Insect Repellent and the subclass of all
15 citizens of the state of New York who
16 purchased the product.

17 Q. Do you know over what time
18 period?

19 A. I don't know exactly what time
20 period.

21 Q. Would the class include people
22 who --

23 A. I know it's in the complaint,
24 though. I just can't think of it off the
25 top of my head.